

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
Jose Adrian ALEGRIA-VELAZQUEZ,  
Defendant.

Case No.: 19-cr-2885-AGS

**ORDER GRANTING DEFENDANT’S  
MOTION TO SUPPRESS POST-  
MIRANDA STATEMENTS  
(ECF No. 18 - 4)**

After reviewing the prior proceedings, the Court grants defendant’s motion to suppress his post-*Miranda* statements, as unopposed.

Defendant Jose Alegria-Velazquez was originally charged in a Complaint with misdemeanor illegal entry by eluding examination and inspection, in violation of 8 U.S.C. § 1325(a)(2). On July 16, 2019, Alegria-Velazquez filed a variety of pretrial motions, including a motion to suppress his post-*Miranda* statements. (*See* ECF No. 18.) Those motions were supposed to be heard at a motion hearing two weeks later, but the government failed to respond to them.

Instead, at the July 30, 2019 hearing, defendant Alegria-Velazquez was arraigned on an Information, charging him with the slightly different misdemeanor of attempted illegal entry at a time or place other than as designated by immigration officers, in violation of 8 U.S.C. § 1325(a)(1). The assigned Assistant U.S. Attorney did not attend the hearing, but another AUSA explained that the assigned prosecutor had been in trial and overlooked the

1 defense motions and the government's response deadline. (Digital Court Record File,  
2 AGS\_Courtroom\_5C\_20190730\_131857, 2:15:25-2:15:35 (explaining that the assigned  
3 AUSA "overlooked it; he was in trial").)

4 To allow the government to file a response, and at the parties' request, the Court  
5 postponed the motion hearing for over two months, until October 8, 2019. The Court  
6 emphasized that it had "put a lot of time and effort into a hearing that isn't going forward  
7 today" due to the government's oversight, and explicitly cautioned the government that  
8 this "shouldn't happen again." (*Id.* at 2:15:55-2:16:02.) Finally, the Court permitted the  
9 parties to file any additional motions before the continued hearing.

10 Nonetheless, the government again failed to respond. Although the government filed  
11 an opposition to Alegria-Velazquez's additional motions to dismiss, it never responded to  
12 defendant's first set of motions, including the motion to suppress post-*Miranda* statements.  
13 At the October 8, 2019 hearing, the assigned AUSA explained that he assumed that those  
14 defense motions were mooted by the filing of the Information.

15 Although the Court provided the government almost three months—and two  
16 hearings—to respond to defendant's motion to suppress, it never filed or provided a  
17 response. The assigned AUSA may have legitimately thought that this motion was moot,  
18 but the government was well aware at the July 30, 2019 hearing that the proceeding was  
19 being postponed to permit the prosecution to respond to the pending defense motions.

20 So the Court **GRANTS** defendant's motion to suppress his post-*Miranda*  
21 statements, as unopposed. The Court continues to reserve, however, on the issue of the  
22 voluntariness of defendant's field statements and post-*Miranda* statements.

23 Dated: October 11, 2019

24   
25 Hon. Andrew G. Schopler  
26 United States Magistrate Judge  
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